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Supreme Court, U.S.
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No. 03-1412

In The
Supreme Court of the United States
October Term, 2003

COASTAL PETROLEUM COMPANY, CHARLES E. ARNOLD, et al., and ROBERT W. CLARK, et al., Petitioners,

v.

STATE OF FLORIDA, DEPARTMENT OF ENVIRONMENTAL PROTECTION and BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND, Respondents.

On Petition For A Writ of Certiorari To The District Court of Appeal, First District, State of Florida

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RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a trial court's determination under the Florida Constitution that denial of a drilling permit at one particular location did not constitute a taking of a 400,000-acre drilling lease is anything more than application of the law of takings (here, of a contract right) to the specific facts as determined by the court.

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STATEMENT REGARDING JURISDICTION

No federal question was presented to or ruled upon by the court below because Petitioner, Coastal Petroleum Company ("Coastal"), purported to reserve federal questions for potential litigation in federal court. Therefore, this court lacks jurisdiction under 28 U.S.C. § 1257(b) and the petition should be denied.

CONSTITUTIONAL PROVISION INVOLVED

The only constitutional provision involved below was article X, section 6(a), of the Florida Constitution: "No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner."

STATEMENT OF THE CASE

Respondents incorporate by reference the Findings of Fact of the trial court (Petitioners' App. at 3-9 [Final Judgment]), on which this Statement of the Case is based.

Lease 224-A was one of three drilling contracts termed "leases" granted in the 1940's to the predecessor of Coastal by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida ("Trustees"). In 1976, Coastal and the Trustees entered into a Memorandum of Settlement, incorporated into a consent decree (collectively, the Memorandum of Settlement"), settling litigation over the validity of its leases. (Pet. App. at 167-175). The Memorandum of Settlement modified Coastal's existing lease agreements to provide a new "paragraph 6 of the Surrender of Rights section."

> Coastal shall secure permits from all appropriate State environmental protection agencies in compliance with the then existing laws and regulations, prior to any drilling or mining.

(Pet. App. at 4.) While agreeing to the addition of this provision, Coastal was released from its "financially onerous drilling obligations." (Pet. App. at 6)

In a seven day trial, the court took evidence on the circumstances surrounding the creation of paragraph 6, finding that this provision made Coastal's right to drill for oil and gas a conditional right and that permits could be denied if Coastal was unable to satisfy environmental concerns. (Petitioners' App. at 7 [Final Judgment].)

The trial court further found as to this provision:

> The primary objective of the State in pressing for the provisions of what became Paragraph 6 of the Memorandum of Settlement was to ensure that any future activities on Coastal's leases would have to comply with all state environmental requirements applicable at the time of the activity and that unless Coastal could obtain state permits in compliance with these environmental requirements that it would have no right to drill on state owned submerged lands.
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> (Pet. App. at 6-7 [Final Judgment]).[1]

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[1] Petitioner generally ignores the trial court decision that it is asking this Court to review, instead citing to the denial of the State's motion to dismiss , other pleadings, and colloquies between the court

Coastal applied for a permit to drill on Lease 224-A. The denial of that permit served as the basis for Coastal's claim that the Respondents "took" its lease. The trial court determined, based on the testimony of expert witnesses, that Coastal had failed to prove that this particular permit denial deprived Petitioner of all economically beneficial use of its 400,000-acre drilling lease, made the lease worth any less than it had been worth before, or curtailed any reasonable investment-backed expectations. (Petitioners' App. at 7-8 [Final Judgment].)

Accordingly, based on its extensive findings of fact, the court entered judgment in favor of the Defendants.

The First District Court of Appeal affirmed *per curiam* without an opinion. *Coastal Petroleum Co. v. Florida Dep't of Envtl. Protection*, 864 So. 2d 402 (Fla. 1st DCA 2004) (Petitioners' App. at 1).

REASONS FOR DENYING WRIT

This case addresses whether a Florida appellate court correctly affirmed a trial court's conclusion, based on extensive factual determinations, that Coastal failed to prove a taking under the Florida Constitution. The case does not address "the right to protection under the Takings Clause [of the United States Constitution] of an oil and gas lease . . . ." (*See* Pet. at 3.) This case represents nothing more than application of state law to specific, judicially determined facts. Certiorari is therefore inappropriate.

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and counsel during trial. (Pet. at 9-10, 20, 22-24.)

1. No Federal Question

For Supreme Court review to be appropriate, a federal question must be presented to, and necessarily decided by, a state court of last resort. *Street v. New York*, 394 U.S. 576, 581-82 (1969); 28 U.S.C. § 1257 (describing this Court's jurisdiction to decide questions of federal law); Sup. Ct. R. 10 (describing certiorari review of "an important federal question"). Review is inappropriate if a party chooses to reserve any purported federal claim for later litigation in federal court. *See NAACP v. Button*, 371 U.S. 415, 427-28 (1963) (review allowed when a party litigates both federal and state claims in state court instead of reserving its federal claims).

Coastal purported to make precisely such a reservation in the present case. Omitted from Petitioners' Statement of the Case is the fact that Coastal stated it was bringing the action below solely under the Florida Constitution, not under the United States Constitution. Petitioners' complaint expressly reserved all claims under federal law to be brought later in federal court:

> COASTAL hereby reserves the right to all claims over which subject matter jurisdiction presently lies, or which may later become ripe, in the courts of the United States. This reservation of claims for later adjudication in federal court, if necessary, is made pursuant to *Jennings v. Caddo Parish School Board*, 531 F.2d 1331 (5th Cir. 1976), cert. denied, 429 U.S. 897 (1976), as applied to claims by COASTAL in this Florida court.[2]

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[2] *Jennings* held that a party wishing "to reserve . . . constitutional claims for subsequent litigation in federal court" must make "on the state record a reservation to the disposition of the entire

(R. at 24 [Complaint].) Thus, according to Petitioners' own theory of the case, the state court had no jurisdiction over, and did not decide, the Fifth and Fourteenth Amendment issues.[3]

The trial court judgment that Petitioners are challenging relies only on Florida law. The Takings Clause of the United States Constitution was not at issue below. (Petitioners' App. at 2-3, 9-11 [Final Judgment].) Because Florida law is similar to federal law, the parties' oral arguments and appellate briefs referred to federal cases as well as to state cases. However, the question decided below – by Petitioners' choice – was only whether a particular permit denial constituted a taking under article X, section 6, of the Florida Constitution. (*Id.* at 2.)

2. No Misstatement of the Law

Petitioners allege only misapplication rather than misstatement of the law. (*See* Pet. at 12, 14 [alleging that the trial court "misapplied" this Court's precedents].) Certiorari review "is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law." Sup. Ct. R. 10. For reasons both of comity and practicality, the Court avoids unnecessary review of state judgments. *Adams v. Robertson*, 520 U.S. 83, 90-92 (1997). Certiorari review is granted "only for compelling reasons," for example, a state court of last resort has decided an important federal question in a way that conflicts with another highest state court, a United States court of appeals, or this Court; or a state court has decided an important question of federal law that is unsettled. Sup. Ct. R. 10; *see also Braxton v. United States*,

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case by the state courts." 531 F. 2d at 1332.

[3] Respondents do not concede the validity of Coastal's purported reservation and will raise all defenses they may have to any future case that any of the Petitioners may bring in federal court.

500 U.S. 344, 347 (1991) ("A principal purpose for . . . certiorari jurisdiction . . . is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law").

Petitioners have shown no necessity for this Court to review the state trial court's decision below. The trial court neither misstated any rule of law nor decided an unsettled question. Petitioners suggest mistakenly that the law is unsettled concerning property interests having a single use. (Pet. at 12.) The Court has frequently addressed single-use property interests. *See, e.g., Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470 (1987) and *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922) (coal mining rights); *Hodel v. Irving*, 481 U.S. 704 (1987) (right to devise fractional interest in land); *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980) (right to receive interest on interpleader fund). In a breach of contract context, the Court addressed a drilling lease similar to Coastal's. *See Mobil Oil Exploration & Producing Southeast, Inc., v. United States*, 530 U.S. 604, 615 (2000) (federal oil and gas lease contractually subject to existing and future conservation regulations).[4]

Petitioners also suggest that the trial court misapplied the Court's precedents to create *per se* rules that: 1) property subject to permitting is not protected by the takings clause, and 2) a policy prohibiting use of property will not result in a taking if the policy may change. (Pet. at 11, 19.) However, the judgment does not support this suggestion. Petitioners refer repeatedly to a "policy" prohibiting drilling throughout Coastal's 400,000-acre lease, (Pet. at 6, 10, 20-25), but omit to

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[4] In *Mobil*, unlike the present case, the government had breached its contract by failing to follow applicable law. *Mobil*, 530 U.S. at 620-21, 607 (allowing restitution damages).

state that the Florida statutory prohibition against future drilling on submerged lands expressly *excludes* pre-existing leases such as Coastal's. Ch. 90-72, § 4, Laws of Fla., codified at Fla. Stat. § 377.242 (2003).

The only "policy" relevant to this case was the case-by-case balancing of statutory criteria that the Florida Department of Environmental Protection (DEP) must conduct in making decisions regarding drilling permits. Fla. Stat. § 377.241 (2003); (*see* Petitioners' App. at 53 [DEP Final Order]) (stating that such balancing of criteria is a policy matter for the agency rather than a fact-finding matter for the administrative law judge). If DEP *had* applied a blanket prohibition to Coastal's leases instead of balancing specific statutory criteria, the permit denial would have been overturned on appeal because DEP's action would have been contrary to sections 377.241 and 377.242, Florida Statutes. Instead, DEP's interpretation of its permitting statute, and its application of the required balancing, were upheld as consistent with legislative intent, *Coastal Petroleum Co. v. Florida Wildlife Federation, Inc.*, 766 So. 2d 226, 228 (Fla. 1st DCA 2000), and not further challenged.

The trial court's findings were based on particular facts with regard to one particular permit denial, not on *per se* rules with regard to a blanket prohibition. The trial court found, based on its detailed evidentiary findings, that Petitioner had not proved a taking:

> The Court finds that Coastal has failed to prove by the greater weight of the evidence that the value of the lease was less after the 1998 permit denial than it was before that denial. Therefore, the Court finds that there has been no diminution in value of Lease 224A as a result of the denial of Permit 1281.
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> ***

> The Court finds that Coastal has not been denied all of its economically beneficial use of its property and that the denial of an application to drill on one location within a 400,000 acre lease does not constitute a taking.
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> ***
>
> Based upon the above findings and the many facts in the record which provide additional credible support for these findings, it is the opinion of this Court that Plaintiff has not established by the greater weight of the evidence that there has been a taking of Lease 224A.
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> ***
>
> The evidence shows no diminution in value in the lease as a result of this denial of one permit application on a 400,000 acre lease.

(Petitioners' App. at 7-8, 9, 11 [Final Judgment].)

The trial court also found, based on the circumstances surrounding Petitioner's particular contract with the Trustees, that Petitioner's right to drill under the settlement of 1976 was thereafter wholly contingent; Petitioner accepted the risk that it might be denied a particular permit:

> The Court finds, based upon the testimony of the negotiators as well as the documentary evidence, that Paragraph 6 of the [1976] Memorandum of Settlement was intended to ensure that Coastal's right to drill for oil and gas would be a conditional right, so that it would only possess a right to drill for and take oil and gas if it could obtain state permits to do so under the then existing laws, and would only be able to obtain such permits if it could satisfy environmental concerns.

(*Id.* at 5) Given the nature of Coastal's contract, as modified by the 1976 Memorandum of Settlement, the trial court found: "Coastal's post-settlement agreement expectations could only reasonably be that it could drill only if it received a permit, and that such a permit might in fact be denied." (*Id.* at 11.)

The Final Judgment makes clear that the trial court based its conclusions on the evidence before it, not on any *per se* rule of law.

3. Highly Particularized, Fact-based Decision

Because the decision below fails to contain any of the sweeping pronouncements alleged by Petitioners, the question offered for this Court's review is simply the same as that offered to the state appellate court -- whether the trial court's findings were supported by substantial evidence. Certiorari review is rarely granted "when the asserted error consists of erroneous factual findings." Sup. Ct. R. 10. There is no basis for such review in this case.

This Court has held that the question whether a plaintiff has been deprived of all economically viable use of its property is predominantly a question of fact. *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 720 (1999). Questions concerning the nature of Coastal's contractual interest and its reasonable, investment-backed expectations are also fact-intensive. *See Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 303 (2002) ("[T]he default rule remains that a fact specific inquiry is required in the regulatory taking context"). The trial court conducted such a "fact specific inquiry."

The trial court based its findings on hearing seven days of testimony, considering more than 200 documentary

exhibits, and weighing the credibility of the witnesses. (Petitioners' App. at 3 [Final Judgment].) Coastal successfully opposed the Trustees' motion to exclude parol evidence (R. XXV at 4817, 4819); hence, in order to interpret the nature of Coastal's rights under its contract, the court made extensive factual findings concerning the circumstances surrounding negotiation of the 1976 Memorandum of Settlement. (Petitioners' App. at 5-7 [Final Judgment].) The trial court also weighed and resolved the credibility of the parties' expert witnesses. (Petitioners' App. at 8-9.)

Certiorari is inappropriate to review the trial court's application of established law to the particularized facts found below and upon which the trial court based its decision.

CONCLUSION

For all the above reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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